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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,219	04/24/2001	Robert Mann	6311-9	6403
21890	7590	07/12/2005		
PROSKAUER ROSE LLP PATENT DEPARTMENT 1585 BROADWAY NEW YORK, NY 10036-8299			EXAMINER COLON, CATHERINE M	
			ART UNIT 3623	PAPER NUMBER

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/841,219

**Applicant(s)**

MANN ET AL.

**Examiner**

C. Michelle Colon

**Art Unit**

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-7,22-27 and 29-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,22-27 and 29-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The following is a Final Office Action in response to the communication received on April 25, 2005. Claims 1, 4 and 7 have been amended. Claims 2, 3, 8-21, 28 and 35-56 have been canceled. Claims 1, 4-7, 22-27 and 29-34 are now pending in this application.

### ***Response to Amendments***

2. Applicant's amendments to claims 1, 4 and 7 are acknowledged. Applicant's cancellation of claims 2, 3, 8-21, 28 and 35-56 is acknowledged. Examiner notes that claims 7 and 29 do not have a status identifier. Applicant is reminded that all claims require a status in the listing of claims in order to avoid a Notice of Non-Responsive Amendment.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bracken et al., "High-tech 360" as applied above.

As per claim 1, Bracken et al. discloses a computer-implemented method for providing performance measurement of multiple evaluatees, wherein the method comprises:

evaluators accessing an online performance measurement program on a distributed network access device (paragraphs 2 and 5; The system consists of an Internet-based 360 degree performance evaluation survey, which users complete online.);

the evaluators electing to complete at least one online 90 degree or 360 degree evaluation for an evaluatee (paragraphs 3 and 4; Users are given instructions for selecting and completing the online evaluation.);

providing the evaluators completing the elected evaluations with evaluation forms (paragraphs 3 and 4; Users complete self evaluations as well as evaluations on their boss, peers and their staff.);

aggregating the results of the evaluations for each evaluatee (paragraph 4; Results of the evaluations are collected and aggregated into feedback reports.); and sending feedback relating to the evaluation to each evaluatee (paragraphs 15 and 16; Evaluatees are provided feedback reports relating to their evaluation.).

Bracken et al. does not expressly disclose providing the evaluations to evaluators/evaluatees in their native language. However, Bracken et al. does disclose a goal of its Internet-based performance evaluation system being to provide transnational data accessibility to companies with global sites (paragraph 25). Providing evaluators/evaluatees evaluations in their native languages would only add to that goal

since doing so would ensure that evaluators/evaluatees can read their evaluations. Furthermore, it is old and well known for companies with global sites to provide their websites in multiple languages. At the time of the invention, it would have been obvious to a person of ordinary skill in the art for Bracken et al. to provide the evaluation system in the native languages of evaluators/evaluatees since doing so would ensure that employees from offices around the globe readily understand what they are reading, thus enhancing the system's data accessibility to its employees in offices around the globe, which is a goal stated by the system of Bracken et al. (paragraph 25). Additionally, the performance evaluation system simply would not work if the evaluators or evaluatees could not read the evaluations.

As per claims 4 and 7, Bracken et al. discloses the method of claim 1 additionally comprising listing on a to do list outstanding tasks relating to completion of the performance measurement for each evaluatee; or listing completed tasks for the performance measurement (paragraphs 4, 6 and 9; Supervisors create up front the parameters for evaluators to complete evaluations, including specified timeframes, deadlines, content, etc. Supervisors are notified by email if raters haven't completed the evaluations within a certain time, wherein the to do item is to complete the evaluation.).

As per claim 5, Bracken et al. discloses the method of claim 1 additionally comprising linking compensation processes to the evaluation (paragraph 29; The system associates, or links, the evaluations with pay increases and promotions.).

As per claim 6, Bracken et al. discloses the method of claim 1 additionally comprising linking promotion processes to the evaluation (paragraph 29; The system associates, or links, the evaluations with pay increases and promotions.).

5. Claims 22-27 and 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bracken et al., "High-tech 360" as applied above and Fethe (U.S. 5,926,794).

As per claims 22-23, Bracken et al. discloses a system for providing a performance evaluation, comprising:

an interface module, said interface module presenting to an evaluator an evaluation form, said evaluator inputting evaluation information regarding an evaluatee into said evaluation form (paragraphs 2 and 5; The system consists of an Internet-based 360 degree performance evaluation survey, which users complete online.); and

a feedback generator retrieving said evaluation information and placing said evaluation information into a feedback form (paragraph 4; The system collects evaluation data and creates feedback forms.);

wherein said interface module presents feedback form to said evaluatee (paragraphs 4, 15 and 16; Evaluatees are provided feedback reports relating to their evaluation.).

Bracken et al. does not expressly disclose providing the evaluations to evaluators/evaluatees in their native language. However, Bracken et al. does disclose a goal of its Internet-based performance evaluation system being to provide transnational

data accessibility to companies with global sites (paragraph 25). Providing evaluators/evaluatees evaluations in their native languages would only add to that goal since doing so would ensure that evaluators/evaluatees can read their evaluations. Furthermore, it is old and well known for companies with global sites to provide their websites in multiple languages. At the time of the invention, it would have been obvious to a person of ordinary skill in the art for Bracken et al. to provide the evaluation system in the native languages of evaluators/evaluatees since doing so would ensure that employees from offices around the globe readily understand what they are reading, thus enhancing the system's data accessibility to its employees in offices around the globe, which is a goal stated by the system of Bracken et al. (paragraph 25). Additionally, the performance evaluation system simply would not work if the evaluators or evaluatees could not read the evaluations.

Bracken et al. also does not expressly disclose an evaluation data database for storing the evaluation information. However, Bracken et al. does disclose a human resources database for storing employee data such as names, department, location, etc. (paragraph 26). Fethe discloses an evaluation database for storing evaluation information (col. 6, lines 31-34; col. 8, lines 54-58). At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the evaluation system of Bracken et al. to utilize an evaluation database as disclosed by Fethe since Bracken et al. already utilizes a database for storing general employee information and since Bracken et al. supports the use of databases to streamline and make more efficient the

evaluation process (Bracken et al., paragraph 26). Thus, an evaluation database would further add to the efficiency and accuracy promoted by the system of Bracken et al.

As per claims 24-27, Bracken et al. discloses the system of claim 21, further comprising monitoring said evaluation information and generating status information regarding said performance evaluation, wherein the status information is to do information, completion data information and is communicated via email (paragraphs 4, 6 and 9; The system automatically distributes and collects evaluations to be completed. Supervisors are notified by email if raters haven't completed the evaluations within a certain time, wherein the to do item is to complete the evaluation.). However, Bracken et al. does not expressly disclose an evaluation data database, the analysis of which is provided above.

Claims 29-34 recite substantially similar subject matter to claims 22-27 above. Therefore, claims 29-34 are rejected on the same basis as claims 22-27 above.

### ***Response to Arguments***

6. Applicant's arguments have been addressed within the analyses of the new grounds of rejections provided above.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Colon whose telephone number is 571-272-6727. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 571-272-6729.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

***Alexandria, VA 22313-1450***

or faxed to:

703-872-9306 [Official Communications; including After Final  
communications labeled "Box AF"]

571-273-6727 [For status inquiries, draft communication, labeled  
"Proposed" or "Draft"]

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cmc

July 8, 2005

  
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